

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BASHARA MERRIWEATHER, #209190,)	
Plaintiff,)	
)	No. 1:22-cv-305
-v-)	
)	Honorable Paul L. Maloney
FREDEANE ARTIS AND UNKNOWN KING,)	
Defendants.)	
_____)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff Merriweather, a prisoner under the control of the Michigan Department of Corrections, alleges an Eighth Amendment claim against the Warden and Deputy Warden at the Brooks Correctional Facility. Plaintiff filed a motion for summary judgment (ECF No. 31). The Magistrate Judge issued a report recommending this Court deny Plaintiff's motion (ECF No. 37). Plaintiff filed objections (ECF No. 38).

After being served with a report and recommendation (R&R) issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Only those objections that are specific are entitled to a de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam).

Plaintiff's claim arises from the MDOC's response to the COVID-19 virus. Plaintiff asserts that some prisoners in his housing unit tested positive for COVID-19, including the

individual with whom he shared a cell. Plaintiff contends he has underlying health conditions and that he requested to be separated from COVID-positive prisoners, a request Defendants denied. The only evidence Plaintiff submitted with this motion is an affidavit in which Plaintiff identifies prisoners who “were moved to C-Wing in B-Unit with the guys that tested Negative for COVID-19, but were considered Close contact” (ECF No. 31-1 PageID.151).

The Magistrate Judge concludes Plaintiff has pled a claim for which relief may be granted (R&R PageID.174 n.1). The Magistrate Judge recommends denying the motion because Plaintiff failed to put forth any evidence to support one of the elements of his claim, whether Defendants failed to respond reasonably to the risk Plaintiff faced.

Plaintiff objects. The Court overrules Plaintiff’s objections. The Court agrees with the Magistrate Judge’s findings and recommendations. Plaintiff’s objections do not address the reason the Magistrate Judge recommends denying the motion. Plaintiff has not pointed to any evidence in the record that would support the missing element of his claim. Plaintiff’s allegations are simply insufficient to meet his burden on summary judgment.

Accordingly, the Court **ADOPTS** the Report and Recommendation (ECF No. 37) and **DENIES** Plaintiff’s motion for summary judgment (ECF No. 31). **IT IS SO ORDERED.**

Date: May 22, 2023

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge